

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

MIGUEL C. GOMEZ, *et al.*,

No. C 11-01725 LB

Plaintiffs,

v.

WELLS FARGO HOME MORTGAGE, *et al.*,

Defendants.

**ORDER CONTINUING HEARING ON
DEFENDANTS' MOTIONS TO
DISMISS AND DIRECTING
PLAINTIFFS TO FILE PROOF OF
SERVICE FOR UNSERVED
DEFENDANTS**

On March 11, 2011, Plaintiffs Miguel Gomez and Sonia Barajas filed a complaint in Contra Costa County Superior Court against Defendants Wells Fargo Home Mortgage; First American Trustee Servicing Solutions, LLC; HSBC Bank; and RMR Financial. Complaint, ECF No. 1 at 24-25. Wells Fargo removed the case from state court on April 8, 2011 and filed a motion to dismiss on April 15, 2011. Notice of Removal, ECF No. 1; Motion to Dismiss, ECF No. 4. First American Trustee also filed a motion to dismiss on April 19, 2011. Motion to Dismiss, ECF No. 8. On May 19, 2011, one week after their response was due, Plaintiffs filed an opposition. Opposition, ECF No. 16. First American Trustee filed a reply on May 20, 2011. Oral argument on these motions is scheduled for June 2, 2011.

Mr. Gomez, Ms. Barajas, Wells Fargo, and First American Trustee have appeared and consented to this court's jurisdiction. However, Plaintiffs have not filed proofs of service for HSBC Bank or RMR Financial and those defendants have neither appeared in this case nor consented to this court's jurisdiction. Absent consent of all the parties, this court cannot rule on Wells Fargo's motion to

1 dismiss or First American Trustee's motion to dismiss. *See* 28 U.S.C. § 636(b) & (c). Under Rule
2 4(m), plaintiffs have 120 days in which to serve a defendant with the complaint. Fed. R. Civ. P.
3 4(m). Thus, Plaintiffs have until July 9, 2011 to serve HSBC Bank and RMR Financial. To permit
4 Plaintiffs time to serve the remaining defendants, the court **HEREBY CONTINUES** oral argument
5 on the pending motions to dismiss to August 4, 2011 at 11:00 a.m.

6 The court **ORDERS** Plaintiffs to serve HSBC Bank and RMR Financial no later than July 9,
7 2011. Once they serve those defendants, they must promptly file a proof of service with the court.
8 If Plaintiffs fail to serve HSBC Bank and RMR Financial by July 9, they risk dismissal without
9 prejudice of their claims against those defendants unless they show good cause for an extension of
10 the service deadline. Fed. R. Civ. P. 4(m).

11 Because Mr. Gomez and Ms. Barajas are *pro se*, and the court must construe *pro se* filings
12 liberally, *see Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001), the court will accept their
13 opposition to the pending motions to dismiss even though they filed it one week after the deadline.
14 First American Trustee already responded to Mr. Gomez and Ms. Barajas's late-filed opposition on
15 May 20, 2011. Reply, ECF No. 17. Wells Fargo may also file a reply to their opposition no later
16 than June 2, 2011.

17 **IT IS SO ORDERED.**

18 Dated: May 24, 2011

19 
LAUREL BEELER
United States Magistrate Judge